

**DISTRICT OF MASSACHUSETTS**

**UNITED STATES OF AMERICA and  
COMMONWEALTH OF MASSACHUSETTS  
*ex rel.* JULIO ESCOBAR and CARMEN  
CORREA, ADMINISTRATRIX OF THE  
ESTATE OF YARUSHKA RIVERA**

**C.A. No. 11-CV-11170-DPW**

Relators—Plaintiffs,

v.

**UNIVERSAL HEALTH SERVICES, INC.,  
UHS OF DELAWARE, INC., and HRI  
CLINICS, INC.**

Defendants.

**DECLARATION OF SIMON FISCHER IN OPPOSITION TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

I, SIMON FISCHER, under penalty of perjury and pursuant to 28 U.S.C. § 1746, declare the following to be true and correct:

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts. I am an associate of the law firm Greene LLP, and I represent Carmen Correa and Julio Escobar (collectively, the “Relators”) in this matter.
2. During discovery Defendants produced Edward Keohan’s appointment books for the years 2007, 2010 and 2011. Defendants contend that Keohan kept track of his supervision sessions with Arbour Lawrence clinicians in these books. The appointment books do contain entries that appear to represent appointments with Arbour Lawrence clinicians, but there also appear to be other types of entries.
3. Keohan testified that in 2017, on the advice of counsel, he went through each of the appointment books and made lists of the appointments with Arbour Lawrence clinicians that were entered in the appointment books and which he claimed to be supervision appointments. Using the datebook he

created a separate list for each year. Keohan testified that the lists were intended to be a summary or compilation of the information that was contained in the date books. Keohan Dep., Exhibit D to the Declaration of Michael Tabb in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment ("Tabb Declaration") at 209:3-212:9. Defendants produced the three handwritten lists in discovery. Attached hereto as Exhibits 1-3.

4. According to HRI's Fourth Supplemental Interrogatory Response at Attachment B, seventy eight clinicians practiced at Arbour Lawrence.<sup>1</sup>

5. According to billing records produced by the Defendants for the relevant period Defendants billed the MassHealth Payors for the services of forty-three unlicensed clinicians who worked at Arbour Lawrence:

Clinician	Date of employment	Degree	MA License
Stephen Addison	09/05/2005 - 12/31/2011	BSW; MSW	None
Reinaldo Betances	04/04/2011-12/31/2011	BA; MSW	None
Sarah A. Birmingham	5/19/2008 - 12/31/2011	BA; MA	None
Marc Borkheim	1995-10/6/2010	PhD; BA; BA	None
Diana Casado	1/1/2005 - 12/31/2009	MA	None
Yakaira Cook	5/14/2008 - 12/31/2011	BSW; MSW	None
Rosario Cruz	3/10/2008 - 12/31/2011	BA; M.Ed	None
Lissa A. DiNuccio	9/01/2007 - 12/31/2011	AA; BA; MA (2009)	None
Juana Espinosa	01/01/2009 - 12/31/2011	BA; MSW	None

<sup>1</sup> Although the interrogatory lists ninety seven clinicians, Defendants believed that 19 clinicians did not work at the Lawrence site because they billed minimal claims to MassHealth or medical care organizations affiliated with MassHealth (the "MassHealth Payors").

Dulce Fiore	11/01/2010 - 12/31/2011	BS; MS; PhD	None
Nora Fonseca Zabriskie	1994-08/22/2011	BS; M.Ed; Doctoral Candidate	None
Anna Fuchu	11/24/2008 - 12/31/2011	BS; MS; Ph.D	None
Joseline Gonzalez	2/12/2010 -Unable to Locate	BA; MSW	None
Maria Gonzalez	8/19/2008-Unable to locate	BA; MA	None
Carmen Guzman	10/29/2007-6/26/2009; 7/25/2011-12/31/2011	BA; MSW	None
Loren Haberski	Unable to locate	MA	None
Shakira Hernandez-Lara	7/18/2011-12/31/2011	BA; MA Candidate	None
Evelyn Hidalgo	7/11/2011	Associates; BA; M.Ed; C.A.G.S.	None
Rhonda Hodges	Unable to locate	MA	None
Gary H. Johnson	8/1/2009	BA; MEd	None
Meghan Knight	Unable to locate - 7/15/2009	Master's Degree	None
Elizabeth Loomis	11/25/2009-12/31/2011	BA; M.Ed candidate	None
Maritzza Lopez	9/20/2010-12/31/2011	M.Ed	None
Katherine Louzek	9/6/2006-7/2011	BA; MSW; MS/BS candidate	None
Endry Matta	Unable to locate	BA; MA	None
Natalie Mersha	10/16/2009-Unable to locate	BS; MS	None
Edward Micu	10/7/2010	BS;M.Ed	None
Laurie Milne	Unable to locate	Unable to locate	None
Andres G. Nino	10/1993-7/18/2011	BA; M.Ed; MA;Ph.D	None
Junice Nunez	3/23/2011; -12/31/2011	BS; MS	None

Norma Ortega	03/2010-12/31/2011	BA; M.Ed	None
Jennifer Ortega-Baird	Unable to locate	MSW	None
Maria Pereyra	8/4/2004-12/31/2011	BS; MSW	None
Beda Polanco	Unable to locate - 6/10/2011	MSW	None
Marilyn Raices-Queliz	9/2009-5/2010; 5/2010-12/31/2011	BA; MA	None
Jose Rigueiro	11/4/2004-Unable to locate	BS; MS	None
Alisha Rousselle	Unable to locate	MA Ed.	None
Carly Souza	09/06/2011-12/31/2011	BA; MSW	None
Lawrence Towler	07/29/2003 - unable to locate	BA; M.Ed; CAGS	None
Charlotte Trenholm	Unable to locate	MSW	None
Viridania Valdez	Unable to Locate	MA	None
Mindy Wisman	Unabl to locate	MA Intern	None
Rose Evelayn Witkowski	8/2006 - Unable to locate	MSW	None

6. During the relevant period, Defendants also billed for five clinicians who worked at Arbour Lawrence who held LSWAs, LSWs, and LCSWs licenses:

Clinician	Date of Employment	Degree	MA License
Nicolas Cruz	1/1/2005 - 12/31/2009	M.Ed	LSWA 2/20/2009 - 10/1/2010
Belen Godwin	6/9/2008-Unable to locate	MSW	LCSW 3/21/1995-Present
Jonathan N. Karanja	3/26/2008-12/31/2011	BS; MS; MPA; MSW	LCSW 8/21/2009-Present
Lillian Levesque	10/21/2004-Unable to locate	BSW; MS	LSWA 5/18/1999-Present

Ann Marie Martinese	2/1/1991-Unable to locate	BA; MSW	LCSW 3/8/1982-Present
---------------------	---------------------------	---------	-----------------------

7. During the relevant period, another six clinicians who worked at Arbour Lawrence received their LMHC while concurrently practicing at Arbour Lawrence:

Clinician	Date of Employment	Degree	MA License
Ruth E. Cabrera	03/19/2007 - 12/31/2011	BA; MEd	LMHC 10/21/2011 - Present
Eileen Casto	1/1/2005 - 12/31/2009	M.Ed; MS	LMHC 7/7/2010 - Present
Linda Coffin	12/9/2002 - 12/31/2011	BS; MA	LMHC 3/24/2006 - Present
Alissa Dillon	unable to locate	MA; M. Ed	LMHC 11/2/2007 - Present
Bibiana Lopez	2/1998-12/31/2011	BA; M.Ed	LMHC 7/16/2009-Present
Edwin Paukert	6/2002-9/15/2008; 9/15/2008-12/31/2011	BA; MA	LMHC 10/26/2005-Present

8. Accordingly, during the relevant time period, fifty-four clinicians could provide reimbursable mental health services to MassHealth members only if they received clinical supervision of a qualified supervisor.<sup>2</sup> Almost 70 percent of all claims submitted to MassHealth Payors were furnished by unlicensed or non-independently licensed clinicians.

---

<sup>2</sup> This does not include Dr. Gaticales who could not practice independently and required clinical supervision. This also does not include advanced practice nurses who could not provide reimbursable services related to medication management without clinical supervision from a qualified psychiatrist.

9. Keohan's handwritten lists did not include the names of all Arbour Lawrence clinicians requiring clinical supervision. His list only contained the name of 30 clinicians who practiced at Arbour Lawrence:<sup>3</sup>

1. Renaldo Betances	16. Kate Louzek
2. Ann Bor	17. Endry Matta
3. Sarah Birmingham	18. Natalie Mersha
4. Anna Cabacoff	19. Edward Micu
5. Diana Casado	20. Laurie Milne
6. Eileen Casto	21. Junice Nunez
7. Alissa Dillon	22. Jennifer Ortega-Baird
8. Lisa Dinuccio	23. Norma Ortega
9. Belen Godwin	24. Maribel Ortiz
10. Joseline Gonzalez	25. Edwin Paukert
11. Shakira Hernandez	26. Maria Pereyra
12. Evelyn Hidalgo	27. Carly Souza
13. Beth Loomis	28. Lawrence Towler
14. Bibiana Lopez	29. Mindy Wisman
15. Maritza Lopez	30. Rosa Evelayn Witkowsky

10. Using Keohan's lists, I created a spreadsheet which showed how many times Keohan had scheduled appointments with the Arbour Lawrence clinicians identified in his handwritten lists. For each clinician appearing on any of the lists, I tabulated how many appointments the clinician had with Keohan in each year. The spreadsheet was marked as Exhibit 14 at the Deposition of Edward Keohan attached as Exhibit AY to the Tabb Declaration.

11. Eighteen of the individuals identified on Keohan's lists were interns: Diana Casado, Eileen Casto, Alissa Dillon, Lisa Dinuccio, Josline Gonzalez, Shakira Hernandez, Evelyn Hidalgo, Beth Loomis, Bibiana Lopez, Maritza Lopez, Katherine Louzek, Endry Matta, Natalie Mersha, Laurie Milne, Junice Nunez, Jennifer Ortega-Baird, Carly Souza, and Mindy Wisemen. Keohan testified that interns were required to receive clinical supervision twice a week. Keohan Dep. 98:7-19. None of the individuals on Keohan's lists had appointments with Keohan at regular frequency of twice a week.

---

<sup>3</sup> Several clinicians found within Keohan's list were not identified as Arbour Lawrence clinicians within Defendants supplemental interrogatory response: Jessica Baily, Kate Faulker, Monica Intern, Rosanne Bartlett, Rosanne Metheson, Soba Gey, and Tiffany Keyes. In addition, some of the clinicians within Keohan's list were licensed for independent practice and therefore under no regulatory obligation to receive clinical supervision: Ann Bor, Anna Cabacoff, Edwin Paukert, and Maribel Ortiz. Accordingly, Keohan's lists possibly evidence his appointments with 26 unlicensed clinicians.

12. Fourteen interns at Arbour Lawrence do not appear on any of Keohan's lists: Stephen Addison, Ruth Cabrera, Linda Coffin, Rosario Cruz, Julie Dziki, Maria Gonzalez, Loren Haberski, Rhonda Hodges, Jonathan Karanja, Meghan Knight, Lindsay Perrone, Marilyn Raices-Queliz, Alisha Rousselle, Charlotte Trenholm.

13. Three individuals on Keohan's lists obtained their LMHC license while practicing at Arbour Lawrence: Alissa Dillon, Eileen Casto, and Bibiana Lopez. The Board of Allied Mental Health and Human Services requires that license applicants receive a minimum of "130 hours of supervision, of which a minimum of 75 hours must be in individual supervision." 262 CMR. 2.08. None of these clinicians, identified above, appeared in Keohan's lists with the requisite frequency—Ms. Dillon was only listed once, Eileen Casto was only listed six times, and Bibiana Lopez was only listed fifteen times.

14. The other clinicians who became licensed while practicing at Arbour Lawrence, (Ruth Cabrera and Linda Coffin), are absent from Keohan's lists.

15. Keohan's attestations on licensing applications are not supported by his own calendars. For example, Keohan attested to providing Maria Pereyra 328 hours of face-to-face clinical supervision from September 1, 2004 through May 25, 2012. *See* Ex. EJ to the Tabb Declaration. Yet, Pereyra only appears in Keohan's calendar ten times: five times in 2007, four times in 2010, and once in 2011. Similarly, Defendants claim that evidence of clinical supervision can be found in the licensing application for Bibiana Lopez. *See* Ex. ES to the Tabb Declaration. Keohan attested to providing 128 hours of individual supervision to Lopez from June 12, 2007, through June 12, 2009 — more than an hour of supervision per week. *Id.* at DPL0000760. Yet, Lopez only appears 15 times in Keohan's calendars.

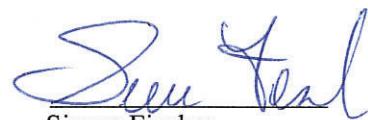
16. The majority of clinicians practicing at Arbour Lawrence who required clinical supervision are completely absent from Keohan's lists—a total of twenty-nine clinicians. Anna Fuchu, Dulce Fiore, Andres Nino, and Marc Borkheim are all absent from Keohan's lists.

17. Defendants' interrogatory response identifies four psychiatrists who practiced at Arbour Lawrence during the relevant period: Dr. Maria Gaticales, Dr. Martin Hart, Dr. Phillip Hill, and Dr. Nathan Sidley. Defendants represented that Dr. Gaticales, Dr. Hart, and Dr. Sidley all began their employment with Arbour Lawrence on March 17, 2008. Defendants were "unable to locate" when these physicians stopped providing services at Arbour Lawrence. Defendants were unable to determine when Dr. Hill began and ended his involvement with Arbour Lawrence. *See* Ex. X to the Tabb Declaration.

18. Billing records produced by Defendants evidence that services furnished by Dr. Hill were presented to MassHealth Payors between April 2, 2007 and August 7, 2007. The billing records evidence that after September 16, 2009 Defendants no longer presented claims to the MassHealth Payors for services performed by Dr. Hart, and that after June 29, 2010 Defendants no longer presented claims to the MassHealth Payors for services furnished by Dr. Sidley at Arbour Lawrence.

19. Defendants refer the Court to Exhibit 71 of the McLane Affidavit (Dkt. 260-71), which is comprised of three separate documents, as proof of Dr. Gaticales's qualification to supervise prescribing nurses. This exhibit is comprised of selected pages (HRI0040469 – 78) taken from a larger document produced by Defendants (HRI0030369-545) which appears to be a compilation of various records from Ms. Ortiz's personnel file.

Signed under the pains and penalties of perjury, this 25 day of July, 2019,



Simon Fischer